

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
ANDIN INTERNATIONAL, INC.

Plaintiff,

- against -

YURMAN STUDIO, INC.

Defendant.

Civil Action No. 08 cv 1159 (HB)

----- X  
YURMAN STUDIO, INC.

Defendant-  
Counterclaimant,

- against -

ANDIN INTERNATIONAL, INC. and  
VARDI GEM LUSTRE, LLC

Counterclaim-  
Crossclaim Defendants.

----- X  
**DECLARATION OF SUE ANN NEWBERG**

I, Sue Ann Newberg, pursuant to 28 U.S.C. § 1746, hereby declare the following under penalty of perjury:

1. I am the Vice President of Merchandising at Yurman Studio, Inc. ("Yurman") and have served in this position since May 2006. I make this declaration in opposition to the motion of Andin International Inc. ("Andin") for summary judgment. I have personal knowledge of the facts set forth below.

2. I have been involved in the jewelry business for over thirty years. Prior to joining Yurman, I was Vice President of Merchandising for Jewelry at the well known retailer Saks Fifth Avenue ("Saks") for five and a half years. In my position at Saks, I was responsible for making purchasing decisions for both fine and fashion jewelry for all Saks stores, as well as reviewing all product presentations from jewelry designers and suppliers. As a result, I was exposed to not only jewelry designs created by every fine jeweler whose collections were sold at Saks, but also to numerous other jewelers who wanted Saks to sell their collections.

3. I am also familiar with the habits of jewelry consumers. In my position at Saks, I was also responsible for training Saks' sales employees working in the jewelry department on how to merchandise the jewelry items offered for sale at Saks. My job required me to be an expert with regard to the habits, attitudes, and characteristics of jewelry purchasers.

4. Since 1984, I have traveled internationally to attend preeminent jewelry trade shows including the Basel Watch & Jewelry Show in Switzerland and the Vincenza Fair in Italy. While attending these shows each year, I am exposed to original designs created by jewelers all over the world.

5. David Yurman products are extremely popular at Saks. Saks has sold Yurman products for over twenty years, and Saks' purchase and sales of Yurman products increased substantially each year that I worked at Saks. Yurman products are well known among the sales people and consumers, with whom I have dealt directly, for having very distinctive looks, different from other jewelry designs.

6. I am familiar with the twelve Yurman products that are the subject of Yurman's trade dress claim in this case, and the five items -- a copyrighted enhancer (D06384), a larger enhancer (D06390), a large earring (E06305), a small earring (E06597) and a ring (R07000) -- that most directly match up to the ensemble sold by Andin. I became familiar with these items while I was working at Saks because Saks offered them for sale in its jewelry department.

7. Saks' advertising campaigns and catalogs feature David Yurman products on a regular basis. I know that the small earring (E06597), identified in paragraph 6 above, as well as other items from Yurman's very popular Silver Ice Collection were featured in a 2001 Saks catalog. A copy of that catalog is attached as Exhibit 1. I am quite sure that the other items identified in paragraph 6 above, as well as other items from the Silver Ice Collection in general have been featured in other Saks catalogs and print advertisements.

8. Each of the items identified in paragraph 6 above share a unique combination of design features -- a cushion shaped focal point consisting of pave diamonds, surrounded or framed by a rim of gold, which in turn is surrounded or framed by cable, or twisted wire, in sterling silver. From my experience, this combination of features is one of the "looks" that David Yurman has become well known for.

9. In my experience, when I saw the Yurman items identified in paragraph 6, that was the first time I had seen this combination of a cushion shape with a pave diamond center, surrounded by gold, surrounded by cable.

10. Based on my experience at Saks dealing directly with sales people and consumers, the many Saks' jewelry customers familiar with the David Yurman brand

would immediately recognize this unique combination of design elements as a distinct David Yurman look and believe that jewelry items with that combination of features comes from David Yurman.

Declared under penalty of perjury, this 27 day of June, 2008.

  
\_\_\_\_\_  
Sue Ann Newberg

# **EXHIBIT 1**

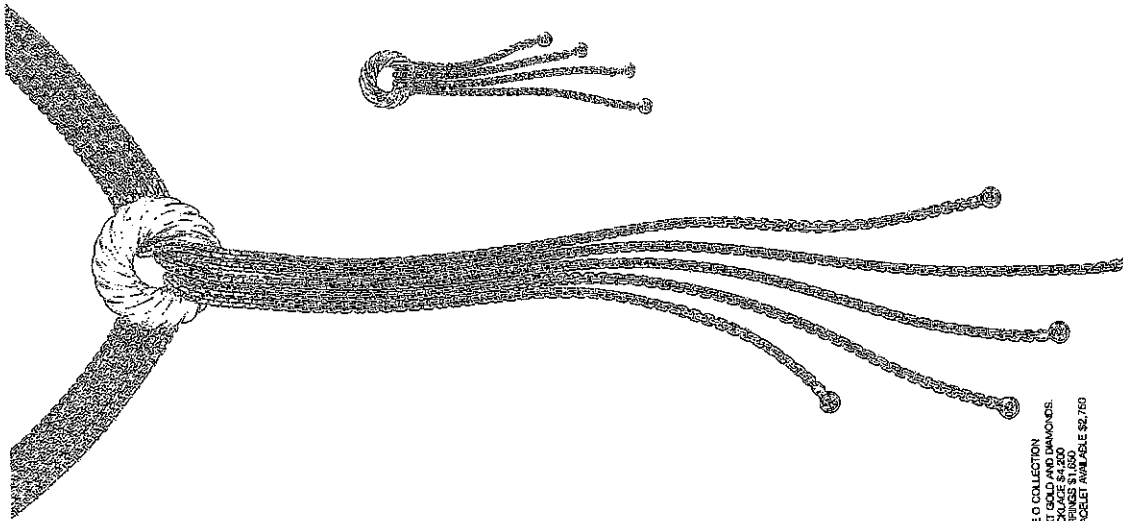
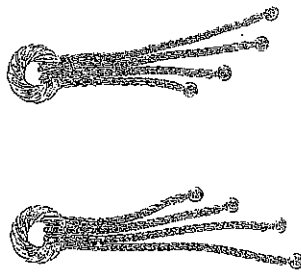


DY-0029

THE CABLE CLASSICS  
18KT GOLD  
DIAMOND CABLE RING \$2,285  
DIAMOND CABLE RING \$1,285  
DIAMOND CABLE RING \$1,200  
DIAMOND CABLE RING \$2,170  
DIAMOND CABLE RING \$2,420



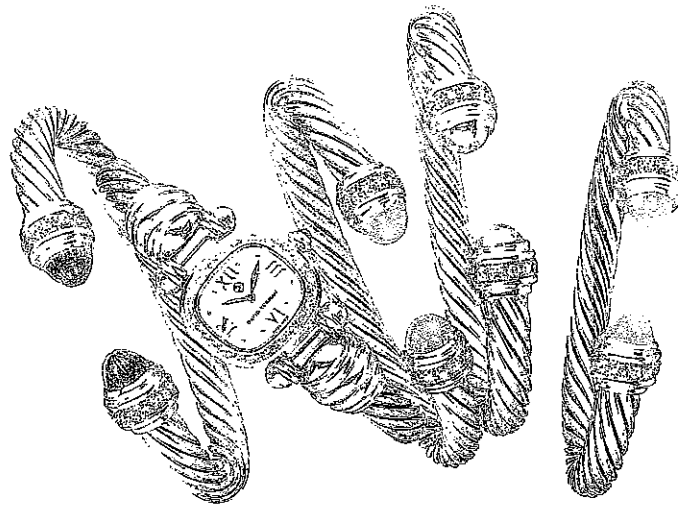
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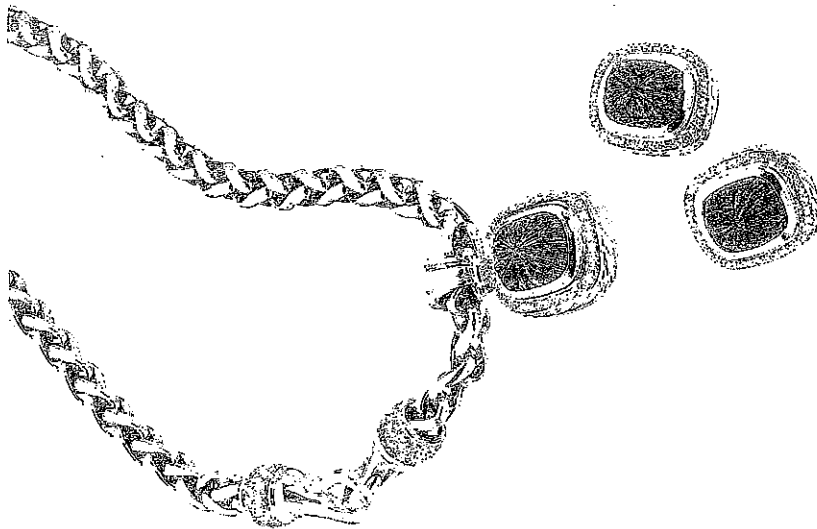
THE O COLLECTION  
18KT GOLD  
DIAMOND CABLE BRACELET \$2,750  
DIAMOND CABLE BRACELET \$1,650  
DIAMOND CABLE BRACELET \$2,750

DY-0030





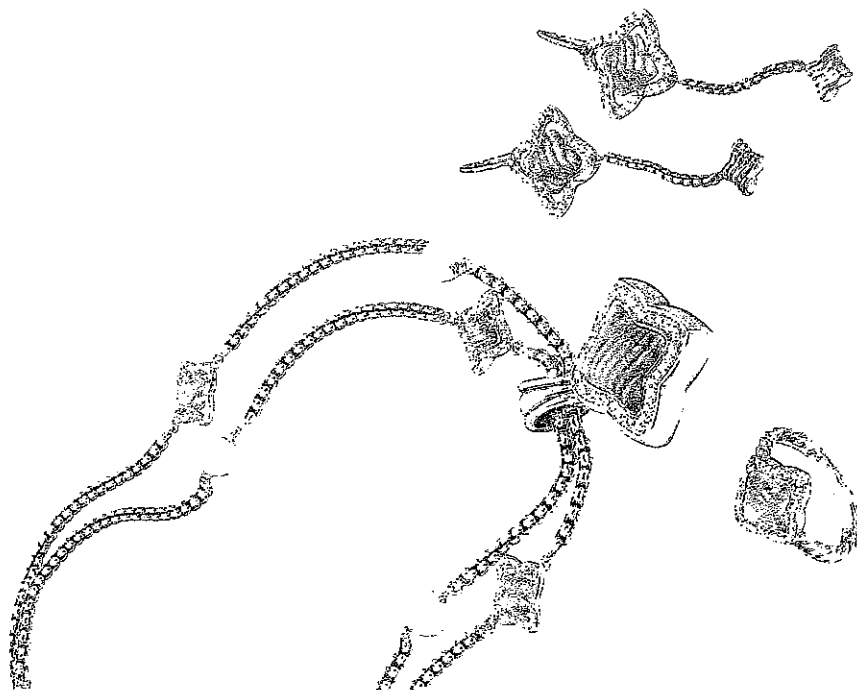
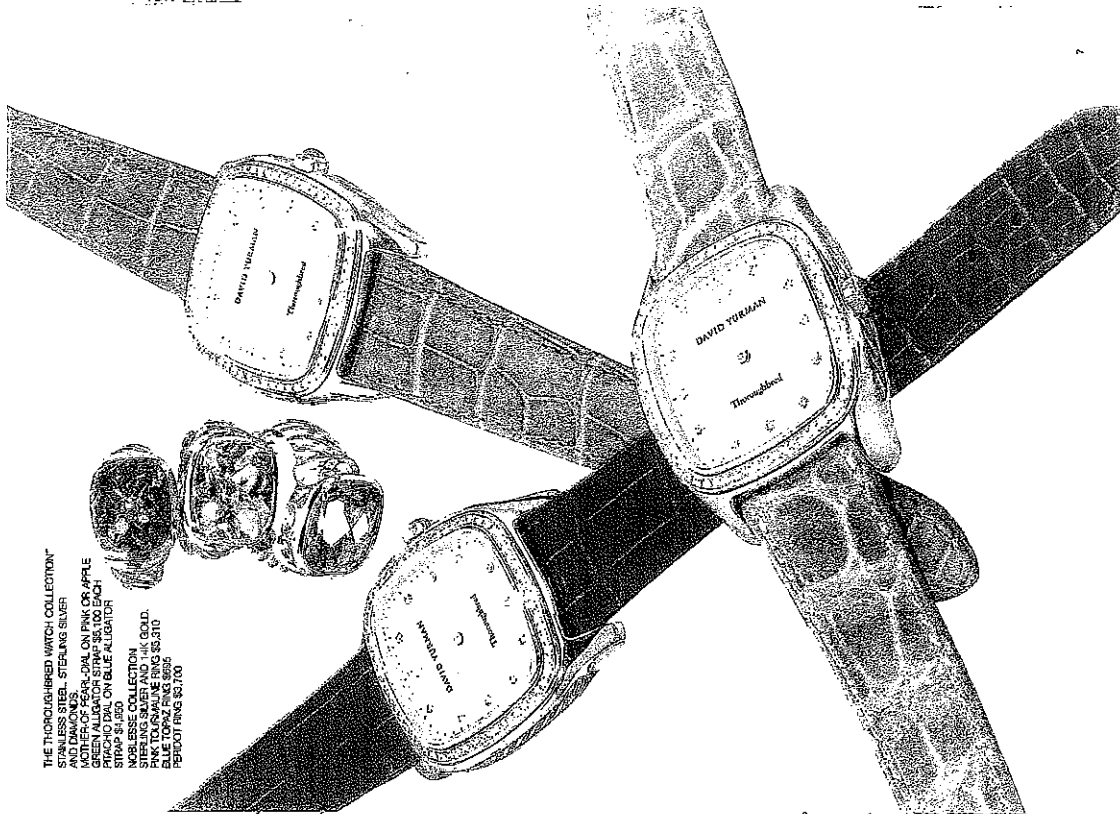
THE SILVER ICE COLLECTION  
STERLING SILVER AND 18KT GOLD  
WATCHES AND BRACELETS  
PINK TOURMALINE BRACELET \$1,199  
CABLE WATCH \$5,350  
BLUE CHALCEDONY BRACELET \$1,700  
CABLE BRACELET \$1,199  
PERUVIAN CABLE BRACELET \$1,199



PINK PASSION SILVER ICE  
STERLING SILVER, 18KT GOLD  
PINK TOURMALINE BRACELET  
ENHANCED \$1,175 ENHANCED \$2,795  
CHAIN \$2,995  
THE WOMEN'S THOROUGHbred  
WATCH COLLECTION  
STAINLESS STEEL, STERLING SILVER,  
MOTHER-OF-PEARL, CRYSTAL  
ON PINK ALLIGATOR STRAP \$3,000



DY-0031



DY-0032

THE CROSSOVER COLLECTION  
18K GOLD WITH PINK DIAMONDS  
NECKLACE \$2,500  
BRACELET \$2,500  
18K PINK DIAMOND  
EARRINGS \$2,500  
RINGS \$1,500



DY-0033

THE SILVER ICE COLLECTION  
STERLING SILVER AND 18K GOLD  
WINTER THEMED JEWELRY  
NECKLACE \$1,750, BRACELET \$1,550,  
EARRINGS \$1,100,  
WATCH \$1,100,  
GOLD DOME BRACELET \$225



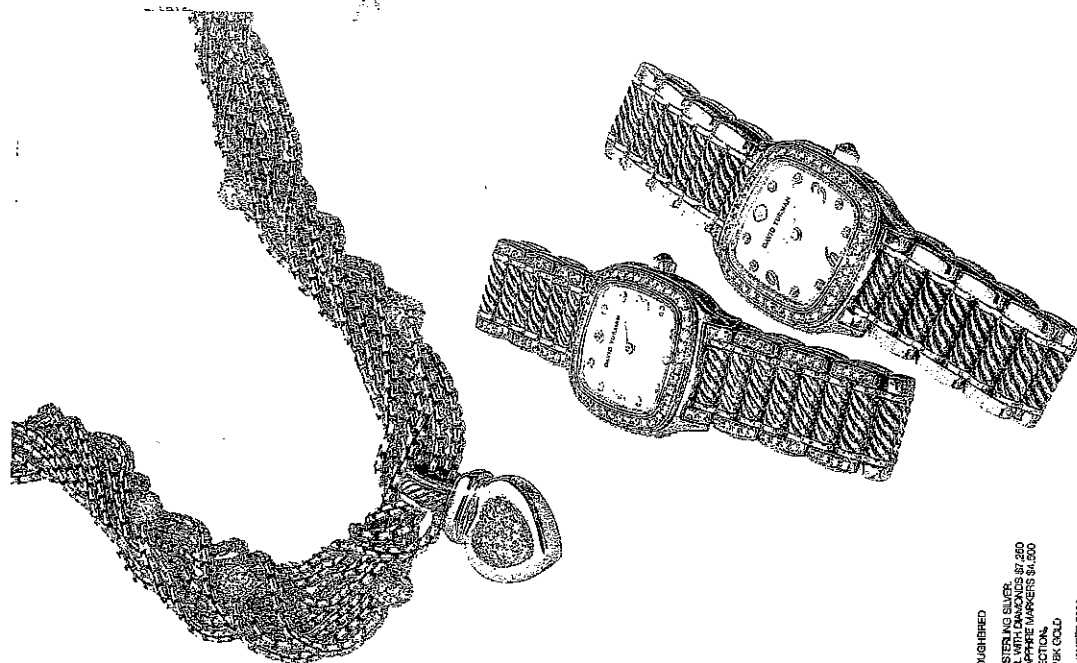
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THE SILVER ICE COLLECTION  
STERLING SILVER AND 18K GOLD  
WINTER THEMED JEWELRY  
NECKLACE \$1,750,  
BRACELET \$1,550,  
EARRINGS \$1,100,  
WATCH \$1,100,  
GOLD DOME BRACELET \$225

DY-0034





THE WOMEN'S THOROUGHBRED  
WATCH COLLECTION  
STAINLESS STEEL AND STERLING SILVER  
PINK GOLD WITH PINK DIAMONDS \$7,200  
PINK GOLD WITH PINK DIAMONDS \$4,200  
THE SILVER ICE COLLECTION  
STERLING SILVER AND 18K GOLD  
WITH PINK DIAMONDS  
REDUCED \$2,600 - \$1,600  
\$1,000



DY-0035



THE QUATREFOIL COLLECTION™  
STERLING SILVER AND 18K GOLD  
NECKLACE \$250 BRACELET \$1450  
CABLE WATCH \$1,500  
EARRINGS \$495 RING \$425



THE MEN'S THOROUGHBRID WATCH COLLECTION

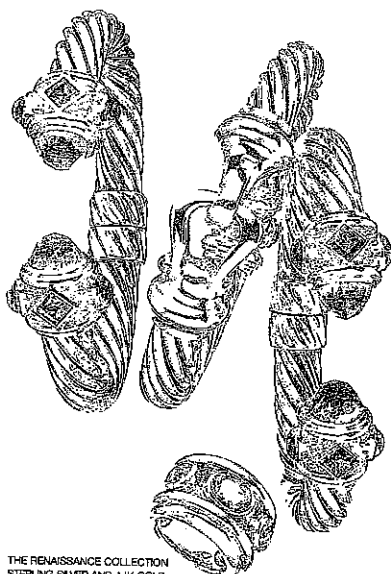
- STAINLESS STEEL AND STERLING SILVER  
BLACK DIAL ON BRACELET \$2,550
- WHITE DIAL ON ALLIGATOR STRAP \$2,050
- STERLING SILVER BRACELET \$525
- BLACK ONYX CLIFLINKS \$920

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DY-0036

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THE RENAISSANCE COLLECTION  
STERLING SILVER AND 14K GOLD.  
PERidot, PINK TOURMALINE  
AND KUTE BRACELET \$3,975  
CITRINE, RODOCHITE, GARNET  
AND GREEN TOURMALINE BRACELET \$2,220  
BUCKLE BRACELET \$1,870  
CITRINE AND PERidot RING \$380

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DY-0037